IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

JUDGMENT

Testamentary Case No.1/2004

In the mater of the Will and Codicil of Mohan Lal Kathotia s/o Shri Bal Chandji Kathotia.

Date of Order: November 18, 2005

PRESENT
HON'BLE MR. PRAKASH TATIA,J.

Mr.Arun Bhansali for the petitioner.

BY THE COURT:

The present petition has been filed by the petitioner for grant of probate of the Will and Codicil dated 13.9.1985 and 1.8.1992 respectively executed by Mohan Lal Kathotia who died on 25.7.1994. The some of the properties referred in the Will are situated at Kolkata in the State of West Bangal and some of the property is situated in the State of Rajasthan, therefore, in view of the provisions of Section 273 of the Indian Succession Act, 1925, the probate petition has been filed in the High Court at Jodhpur. By the order of this Court dated 22.7.2004, the notices were issued to the District Collector,Churu as well as of Kolkata and it was also ordered that notices be published in the news-paper "Rajasthan Patrika" circulating in the area of Churu and Sujangarh and the citation be issued to Smt. Kiran Devi Dasani and Smt. Kanak Devi Bothra, who both are daughters of deceased Mohan Lal

Kathotia. The third daughter of the deceased Mohan Lal Kathotia was Smt. Jeewani Anchalia, who was eldest daughter and died on 18.10.1999 leaving behind her husband Shri K.K. Anchalia as her only legal heir. Shri K.K. Anchalia also died on 18.12.1999. However, before death of Smt.Jeewani Devi, she sworn affidavit on 14.10.1997 indicating that she had no objection of any kind whatsoever for grant of probate of the Will and Codicil. An affidavit dated 14.10.1997 of Smt.Jeewani Devi Anchalia has been filed by the petitioner along with this petition and which is marked as Annx.D.

The wife of deceased Mohan Lal Kathotia, Smt. Sowani Devi predeceases Mohan Lal Kathotia on 7.2.1976 and mother of Mohan Lal Kathotia deceased (executant of the Will) also died prior to the death of Mohan Lal Kathotia, therefore, at the time of death of deceased Mohan Lal Kathotia, there were only three daughters who were natural heirs of the deceased Mohan Lal Kathotia, out of which one daughter Smt.Jeewani Devi died before the present petition was filed before this Court on 15.3.2004. The petitioner is one of the two executors named in the Will in the testator of Mohan Lal Kathotia. The other executor named in the Will is Bachhraj Kathotia s/o Shri Nathmal Kathotia has not accepted the office of the executor of the Will of Mohan Lal Kathotia on account of his ill-health as stated by the petitioner in the probate petition. The applicant-petitioner submitted affidavit of one of the

attesting witnesses to the Will dated 13.9.1985, who is R.P. Mehrotra s/o Shri Beni Prasad Mehrotra. According to the petitioner, other attesting witness of the Will, Kishan Lal Dugar died on 31.3.1993 and the petitioner Noratan Mal Dugar being son of Kishan Lal Dugar and who is well acquainted with the signatures of Kishan Lal Dugar, states that the signatures on Will and Codicil dated 1.8.1992 are of Kishan Lal Dugar, who signed the Will as an attesting witness. It is stated by the petitioner that Kishan Lal Dugar and Naresh Chand Jain put their signatures as attesting witnesses of the Codicil dated 1.8.1992 but unfortunately, both the attesting witnesses are dead. The petitioner, therefore, filed affidavit of Tarun Jain s/o late Shri Naresh Chand Jain identifying and proving the signatures of late Shri Naresh Chand Jain. According to one of the executors of the Will, the Will dated 13.9.1985 was the last Will of deceased Mohan Lal Kathotia and the Codicil dated 1.8.1992 is the last Codicil made by the deceased Mohan Lal Kathotia, therefore, the probate of Will and Codicil may be granted.

Notices sent to Smt. Kanak Devi Bothra, Smt. Kiran Devi and to the District Collector, Churu and the District Collector, Kolkata as well as to the Board of Revenue, Ajmer, were served and the notices were also published in the news-paper Rajasthan Patrika. Smt. Kanak Devi Bothra to whom the notices were issued, sent a letter by post, which is entered at S.No.8321 dated 8.9.2004, stating therein that she has no

objection in case probate of Will and Codicil is granted to the petitioner. Smr. Kiran Devi also sent her no objection for grant of probate by post, the letter is also entered at S.No.9948 dated 19.10.2004. Since no caveat was filed by any of the interested persons nor objection was raised by any of the persons who could have been interested and to whom notices were sent by this Court, therefore, the petitioner-applicant was allowed to produce evidence by filing affidavits. The original Will as well as the Codicil were also filed in the Court and in pursuance of the court's order for submitting evidence by way of affidavit, the appellant submitted affidavit of executor Noratanmal Dugar and this Court vide order dated 28.1.2005 directed to put exhibits marked on the documents. Today also no body appeared to oppose the petition for grant of probate for the Will dated 13.9.1985 and Codicil dated 1.8.1992.

Heard learned counsel for the petitioner-applicant. The learned counsel for the petitioner-applicant submitted that the Will dated 13.9.1985 executed by deceased Mohan Lal Kathotia , is the last Will of the deceased. By this Will the property has been bequeathed by the deceased as mentioned in the Will. The deceased executed the Will in presence of the two attesting witnesses Kishan Lal Dugar and R.P. Mehrotra. R.P. Mehrotra submitted the affidavit stating therein that the Will dated 13.9.1985 executed by the deceased Mohan Lal Kathotia is

the last Will of the deceased Mohan Lal Kathotia. The Will was executed in the presence of said R.P. Mehrotra and Kishan Lal Dugar at the residence of deceased at Kathotia Bhawan, 1532, Chandrawal Road, Subzi Mandi, Delhi. He saw the executant signing the Will. Both the attesting witnesses R.P. Mehrotra and Kishan Lal Dugar put their signatures as attesting witnesses in presence of deceased and at the request of the deceased. It is also stated by R.P. Mehrotra in the affidavit that name and signature of Mohan Lal Kathotia subscribed at the foot of the said testamentary paper is in original and in his handwriting. He further stated that Mohan Lal Kathotia was his close friend and at the time of execution of the Will, Mohan Lal Kathotia was looking healthy and was of sound mind with sound memory. The Will was executed voluntarily and by free will by Mohan Lal Kathotia.

Tarun Jain s/o late Shri Naresh Chand Jain submitted affidavit stating therein that he is son of Naresh Chand Jain and is well acquainted with the signature of said Narech Chand Jain. He further stated that his father Naresh Chand Jain died on 29.11.1999. He stated on oath that Codicil dated 1.8.1992 to the land Will and testament of Mohan Lal Kathotia dated 13.9.1985 bears the signatures of his father Naresh Chand Jain who was witness to the execution of the document along with Kishan Lal Dugar, when the Codicil was executed by said Mohan Lal Kathotia. An affidavit of Naresh Chand Jain dated 1.6.1998

has also been filed by the applicant executor of the Will, which according to the applicant was sworn in by Narech Chand Jain in his life-time. The affidavit of Naresh Chand Jain is to the effect that Naresh Chand Jain is well acquainted with Mohan Lal Kathotia and said Mohan Lal Kathotia executed said Will on 13.9.1985 and also executed Codicil on 1.8.1992. On the request of testator on 1.8.1992, he along with Kishan Lal Dugar at the residence of the deceased at Kathotia Bhawan, 1532, Chandrawal Road, Subzi Mandi, Delhi, put their signatures as attesting witnesses. He also stated that Shri Kishan Lal Dugar also put his signatures at the request of the executant Mohan Lal Kathotia. Yet another affidavit of Shri Ram Prasad Mehrotra dated 16.11.2004 and affidavit of Tarun Jain dated 16.11.2004 were filed by the petitioner-applicant for proving the Will and Codicil.

It may be recapitulate that affidavit of Smt. Kiran Devi and Smt. Kanak Devi were filed along with probate application itself, in which they admitted the Will dated 13.9.1985 as the last Will of Mohan Lal Kathotia and Codicil dated 1.8.1992 and its due execution by the deceasd Mohan Lal Kathotia. They also stated on oath that the Will and Codicil were executed by the executant Mohan Lal Kathotia and in case probate is granted, they have no objection.

In view of the above uncontroverted evidence, the probate petition deserves to be allowed. Hence allowed and it is declared that

the Will dated 13.9.1985 executed by deceased Mohan Lal Kathotia s/o Late Shri Balchandji Kathotia of Sujangar and who was residing at Kathotia Bhawan, 1532, Chandrawal Road, Subzi Mandi, Delhi executed his last Will in his full senses and out of his free will and put his signatures on the Will in presence of two witnesses Kishan Lal Dugar and R.P. Mehrotra and also executed the Codicil dated 1.8.1992 in his good mental position and out of his free will in the presence of two attesting witnesses Kishan Lal Dugar and Naresh Chand Jain. The attesting witnesses attested the Will and Codicil in the presence of the testator Mohan Lal Kathotia and on the instructions of said Mohan Lal Kathotia. The probate certificate be issued to the petitioner-executor named in the Will Noratanmal Dugar s/o late Kishan Lal Dugar for the Will dated 13.9.1985 and Codicil dated 1.8.1992 of late Shri Mohan Lal Kathotia s/o Balchandji Kathotia of Sujangarh having effect throughout the territory of India.

(PRAKASH TATIA),J.

mlt.